



M E M O R A N D U M

To: Glenna Henson, Cluster Manager
Modesto and Turlock Workforce Service Offices
Numbers 0620 and 0623
Date: July 3, 2009
File No.: 74:FM:02/24:361:em

From: Ernesto Magaña
Employment Development Department

Subject: **MONITOR ADVOCATE OFFICE ON-SITE ANNUAL REVIEW
PROGRAM YEAR 2008-2009
MODESTO AND TURLOCK WORKFORCE SERVICE OFFICES
FINAL MONITORING REPORT**

This Final Monitoring Report summarizes the California Monitor Advocate Office's (MAO) results of the Migrant and Seasonal Farmworker (MSFW) on-site annual review of the Modesto and Turlock Workforce Services (WS) offices. Francisco Macias, Associate Monitor Advocate, conducted this annual review from May 11, 2009 through May 13, 2009. We focused our annual on-site review on the full range of employment services, benefits, and protections, including the full range of job and training referral services, counseling, and testing provided to MSFWs.

The MAO conducted this annual on-site review under the authority of all related Federal Regulations, including Title 20 of the Code of Federal Regulation (CFR), Chapter V, Parts 651, 653, and 658; applicable State laws; and Employment Development Department (EDD) Job Service (JS) policies and procedures. Specifically, Title 20 CFR, Part 653.108, requires the MAO to perform ongoing reviews of EDD services to MSFWs.

We collected information for this report by examining the Modesto and Turlock WS offices' provision of services, job information sharing and job application taking process, outreach program operation, data collection, agricultural clearance order activity, and JS complaint system. Additionally, we interviewed Modesto and Turlock WS offices management and staff.

We received two electronic responses to the three findings described in the Draft Monitoring Report dated June 5, 2009. On June 18, 2009, we received a response to Finding 1. On June 24, 2009, we received a response to Findings 2 and 3. We have reviewed your comments and have incorporated them into this Final Monitoring Report.

Our annual monitoring review revealed the following findings:

Finding 1: **Limited MSFW Outreach Activities**

Observation: During the pre-site review analysis, we noted that the Modesto and Turlock WS offices used approximately 481 hours combined in MSFW outreach activities between July 2008 and March 2009. The Workforce Services Branch's (WSB) Agricultural Services Plan for Program Year (PY) 2008-09 allocates 1.75 Personnel Equivalents (PE) to the Modesto Cluster that includes the Modesto and Turlock WS offices to conduct MSFW outreach activities. The Modesto and Turlock WS office manager confirmed that both WS offices had a combined allocation of approximately 1,387 hours for MSFW outreach activities for PY 2008-09. We also noted that the Modesto and Turlock WS offices Outreach Worker's (OW) position statement allocated only 35 percent to perform MSFW outreach activities.

Citation: 20 CFR 653.107 and Agricultural Services Plan PY 2008-09

Response: The Modesto and Turlock WS offices' management responded by clarifying that an error had been made on the number of confirmed hours allocated for both WS offices for MSFW outreach activities. The correct number of hours should be 995 hours for both offices. The response included an analysis of how the allocation of hours for MSFW Outreach Activities was determined. In addition, the response acknowledged that the total number of allocated hours for MSFW Outreach Activities will be underused for PY 2008-09. Because of the loss of four bilingual employment representatives, the OW had to remain in the office to provide bilingual services. The Modesto and Turlock WS offices did not obtain the authorization to hire new staff until recently in 2009. Two bilingual staff have been hired and are currently in training. Furthermore, the June 18, 2009 response stated that the OW's position statement should reflect 55 percent of time allocated for MSFW outreach activities.

Discussion:

We encourage WSB to ensure that its Agricultural Services Plan reflects the actual allocation of MSFW outreach activity hours to individual WS offices. Even with the corrected number of hours of 995, the Modesto and Turlock WS offices had used only 48 percent (481 hours) of its MSFW outreach allocated budget at the time of the MAO programmatic review. Although we acknowledge the challenges that local WS offices are faced with having to replace and hire new staff, we must point out that we identified the same issue during last year's MAO programmatic review. At that time, MAO accepted the Modesto and Turlock WS offices proposed Corrective Action Plan (CAP). However, the proposed CAP was not implemented. Furthermore, we note that the OW's position statement, dated June 22, 2009, reflects only 50 percent of time allocated for MSFW outreach activities and not 55 percent as stated in the response.

Recommendation:

The MAO recommends that the Modesto and Turlock WS offices coordinate their staffing resources efficiently to ensure that a comprehensive MSFW outreach activities are conducted in their local areas as mandated by Federal Regulations and EDD policy.

Finding 2:

Complaints Processing

Observation:

As part of the MAO on-site annual review, we interviewed the Modesto and Turlock WS offices' complaint specialists to test for EDD WS offices' compliance and adherence to federal and State requirements for processing all types of complaints. When interviewed, Modesto and Turlock WS offices' staff stated that when customers inquire about processing complaints, the Modesto and Turlock WS offices staff provide customers with a flyer. A copy of the flyer was provided to MAO staff and is attached to this Final Monitoring Report (Attachment I). The flyer instructs customers to mail their complaints directly to two enforcement agencies.

Observation (cont.): The complaint portion of the flyer is in English only. The addresses for the State Labor Commissioner in Stockton and the Department of Fair Employment and Housing in Sacramento are included in the flyer. On the back of the flyer, there is information in Spanish related to the services provided by California Rural Legal Aid. The flyer does not include instructions on how to file complaints at an EDD WS office nor does it inform customers that they have the option to file in person at an EDD WS office. Moreover, the flyer does not inform customers that they can file complaints against EDD employees, policies, and services.

Citation: 20 CFR 658.401; 20 CFR 658.413; Complaints Systems Manual Section 01-02-00

Response: The Modesto and Turlock WS offices' management responded to this finding on June 24, 2009. First, the response questioned the information gathered by MAO staff by stating that the Modesto and Turlock WS offices' management interviewed their staff and they could not quote verbatim how they answered the questions during the interviews with MAO staff. However, staff stated they all use the JS Complaint Manual. Second, the response stated that a handout, in both English and Spanish, is issued to customers at the reception desk in the Modesto and Turlock WS offices. Lastly, the response stated that the flyer is not issued in lieu of filing complaints on a DE8151 form.

Discussion: The MAO does not support the use of this flyer in its current form. We believe that the flyer discourages customers from coming to the EDD WS offices to file complaints because the flyer does not inform the customer of that option. For the flyer to be complete, it will have to clearly and fully explain the EDD JS Complaint System and the different options available to customers such as filing in person at EDD WS offices. We believe that, in its current form, the flyer encourages customers "to mail" complaints only. According to EDD policy and procedures, MSFWs are a special client group to whom EDD provides "office-based" services. Sometimes MSFWs need the one-on-one assistance of EDD staff to properly complete and process

Discussion (cont.):

complaint forms. Consequently, providing this flyer, in its current form, prevents MSFWs from benefiting from the one-on-one assistance available to them. An MAO analysis of the Modesto and Turlock WS offices' complaint logs (DE8151G) revealed that there was one complaint filed at the Modesto WS office and no complaints filed at the Turlock WS office from July 2008 and May 2009.

Recommendation:

We recommend that the Modesto and Turlock WS offices discontinue the use of the flyer in its current form or modify it in a way that fully explains the EDD JS Complaint System, including the option to file complaints at EDD WS offices in person.

Finding 3:

Outreach Worker Duties

Observation:

During the outreach ride-a-long, the OW was observed conducting an inspection at a job site. Specifically, we noted the OW requesting to see the farm labor contractor's (FLC) license from the supervisor in charge. In addition, the OW questioned MSFWs regarding their age and asked for identification to confirm that the MSFWs were not underage workers.

Citation:

20 CFR 653.107 and MSFW Outreach Program Manual Section 02-04-01

Response:

The Modesto and Turlock WS offices' management responded to this finding on June 24, 2009. The response made reference to the MSFW Program Manual Section 02-05-01 (cont.1) stating: "if complaints are discussed, explain how the Outreach Worker can assist in preventative measures such as health and safety training or informing MSFWs of their rights." Additionally, the response states that the OW assists FLCs in the license application process and explains to them the consequences and fines resulting from working with an invalid license. Furthermore, the response states that the OW has participated in Economic and Employment Enforcement Coalition (EEEC) sweeps and has applied that experience in deflecting apparent violations.

Glenna Henson
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Discussion:

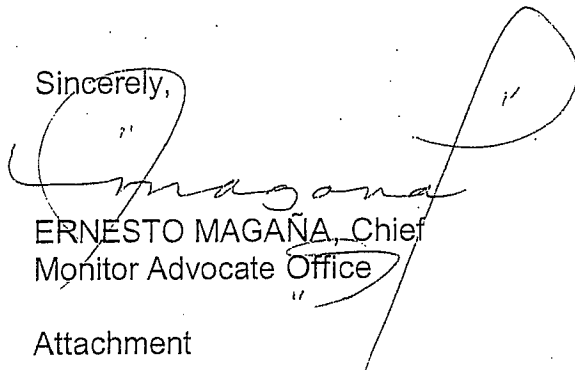
We consider asking for FLC licenses for verification and verifying the ages of MSFWs to be enforcement activities. No EDD OW has enforcement authority. We are aware that EDD OWs participate in EEEEC sweeps. There are specific roles played by an EDD employee when participating in an EEEEC sweep. However, EDD employees do not have enforcement roles in the EEEEC sweeps. EDD employees serve as interpreters or assist other enforcement agencies staff to do their work. We encourage EDD OWs to continue working with and assisting employers in a non-enforcement role.

Recommendation:

We recommend that the Modesto and Turlock WS offices' management ensures that the OW is not performing enforcement activities.

Please extend our appreciation to your staff for their cooperation and assistance during our review. If you have any questions, please contact Francisco Macias at (916) 651-9463.

Sincerely,



ERNESTO MAGAÑA, Chief
Monitor Advocate Office

Attachment

cc: Robert Bittner, Regional Administrator, Workforce Services Branch
Diane Ferrari, Division Chief, Workforce Services Branch
Jose Luis Marquez, Deputy Chief, Workforce Services Branch
Mary Mendoza, Modesto and Turlock Workforce Service Offices Manager